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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,048

11/08/2005

Mark Geach

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23117 7590 12/03/2008  
NIXON & VANDERHYE, PC  
901 NORTH GLEBE ROAD, 11TH FLOOR  
ARLINGTON, VA 22203

EXAMINER

BEKKER, KELLY JO

ART UNIT

PAPER NUMBER

1794

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DELIVERY MODE

12/03/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,048	<b>Applicant(s)</b> GEACH, MARK	
	<b>Examiner</b> Kelly Bekker	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/6/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I, claims 1-13 in the reply filed on September 8, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claim 14 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if

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the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites, "A composition comprising a dry powdered diet which, when mixed with wet feed and/or with water, forms a gel." It is unclear as to if the "composition" or the "dry powdered diet" forms a gel when mixed with wet feed and/or water.

Claim 1 recites, "A composition comprising a dry powdered diet which, when mixed with wet feed and/or with water, forms a gel." It is unclear as to what the term "dry powdered diet" encompasses. It is unclear as to if the term includes any powdered type food, or if the term includes only specific diet foods, such as for a certain species, or if the term has some other meaning.

Claim 2 recites, "A composition as claimed in claim 1, further comprising a liquid diet component." It is unclear as to what the term "liquid diet component" encompasses. It is unclear as to if the term includes any liquid type food, or if the term includes only specific foods, such as for a certain species, or if the term has some other meaning.

Claim 2 recites, "A composition as claimed in claim 1, further comprising a liquid diet component." Claim 1 recites, "A composition comprising a dry powdered diet which, when mixed with wet feed and/or with water, forms a gel." The claims are unclear and appear to contradict; Claim 1 recites that the composition will form a gel when mixed with liquids, implying that the composition is not a gel at the instant time, however, claim 2 recites adding a liquid to the composition of claim 1, thus implying that

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the composition of claim 1 is a gel at the instant time. However, claim 2 does not recite a gel product; thus, it is not clear what is the product that's being claimed.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Dugger et al (WO 98/47392).

Dugger et al (Dugger) teaches of a composition comprising a dry powdered diet including wheat flour (page 4 lines 1-11), which when mixed with wet feed or water forms a gel (page 6 lines 18-22). Dugger teaches that the composition comprises a liquid diet including oil, vitamins and miners (page 4 lines 1-11 and 25-30 and page 6 lines 1-8). Dugger teaches that the liquid component has micelles containing fat soluble vitamins (page 4 lines 1-11 and page 6 lines 1-8). Dugger teaches that the composition includes crustacean meal and kelp meal which can be in liquid form (page 4 lines 1-11 and page 8 line 19). Dugger teaches that the composition contains a natural binder of particulate algae by teaching that the composition includes kelp meal, which inherently contains binders such as alginate, in dry form (page 4 lines 1-11 and page 8 line 19). Specifically regarding the algae and crustacean from natural sources, since Dugger teaches of algae and crustaceans but does not teach that they are artificially produced one of ordinary skill in the art would expect that the algae and crustacean inherently be from natural sources.

Claims 1-4, 6, 7 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (GB 2175486 A).

Smith teaches of a composition comprising a dry powdered diet, which when mixed with wet feed or water forms a gel (abstract and page 1 lines 83-91). Smith teaches that the composition is mixed with water containing calcium ions, i.e. a liquid

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diet component containing minerals (page 1 lines 86-91 and 95-101). Smith teaches that the composition contains micelles containing fats (page 1 lines 96-98). Smith teaches that the composition contains a natural binder (page 2 lines 1-6). Smith teaches that the gel can be formed in a noodle shape, i.e. rope shape, and can be frozen (page 1 lines 92-95).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dugger et al (WO 98/47392).

Dugger teaches of a composition that forms a gel when mixed with water, as discussed above. Dugger teaches that the gel can be of desired shape (page 4 lines 17-30 and page 5 lines 1-4). Dugger is silent to the gel as in a rope or block form as recited in claims 11 and 12 or to the gel as frozen as recited in claim 13.

Regarding the shape of the gel, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the gel to be in a shape of the naturally occurring food item which the gel was to mimic as taught by Dugger. For example, one would have been motivated for the gel to shaped as a rope in order to mimic a noodle or one would have been motivated for the gel to be in block form in order to mimic bread.

Regarding the gel as frozen, it would have been obvious to one of ordinary skill in the art at the time the invention was made to freeze the gel in order to keep it for a longer time. Freezing was a well known method to extend preservation and to use such well known methods for their intended functions would have been obvious and within

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the routine determination of one of ordinary skill in the art at the time the invention was made.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/  
Primary Examiner  
Art Unit 1794

/Kelly Bekker/  
Examiner  
Art Unit 1794